

AGREEMENT TO PROVIDE

GOODS AND SERVICES

TO LORAIN COUNTY, OHIO

THIS AGREEMENT, entered into this 21st day of December, 2022 and effective immediately by and between **Cleveland Communications, Inc.**, (hereinafter called the "Contractor") and **The Lorain County Board of Commissioners**, (hereinafter called the "County")

WITNESSETH THAT:

WHEREAS, the County has adopted the Lorain County Public Safety Radio System Program (the "Program") for the benefit of its citizens; and

WHEREAS, in order to coordinate and assist the local governments within Lorain County, Ohio, and by resolution passed by the County contemporaneously with the resolutions authorizing this Agreement, the County has authorized the expenditure by the County of a certain amount of federal funds constituting American Rescue Plan ("ARP") funds for the express purpose of allowing such local governments a period of sixty (60) days from the date this Agreement is executed to determine whether it wishes to participate in the Program (the "Program Window"); and

WHEREAS, the Contractor is staffed with personnel knowledgeable and experienced in the requirements of developing and negotiating such a project; and

WHEREAS, in response to the County's solicitation of proposals, the Contractor submitted its proposal on October 14, 2022 to perform services regarding the purchase of mobile and portable radios and Symphony dispatch consoles for the County and the various local governments in Lorain County, Ohio (the "Proposal"); and

WHEREAS, the County has accepted the Contractor's Proposal and has authorized the entering into this Agreement by Ordinance/Resolution # 22-909.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to, the parties hereto agree as follows:

1. **Contractor** - The County agrees to engage the Contractor as an independent contractor and the Contractor hereby agrees to provide certain equipment and perform the services described in said Proposal on the terms and conditions set forth in this Agreement.
2. **Scope of Services** - The Contractor shall do, perform, and carry out in a good and professional manner the replacement of certain communications equipment in accordance with the County's request and the Contractor's Proposal. The Contractor's Proposal is incorporated herein as if fully re-written and a summary of the project components to be purchased and installed along with milestones and timelines of installation are attached hereto as Exhibit A (the "Project").
3. **Time of performance** - Contractor will begin performance under this Agreement upon the expiration of the Program Window and shall perform consistently and vigorously until completion. Estimated time frames for delivery and installation of equipment is shown on Exhibit A. The parties agree that the estimated 18-month acquisition and installation schedule shall commence on the delivery of the radios/equipment as set forth in the Contractor's Proposal. Further, the parties agree that the substantial completion of the Project is subject to delays beyond the control of the Contractor, such as supply chain issues, acts of God and similar type issues.
4. **Compensation** - The County agrees to pay the Contractor the amount of **\$7,758,276.17** for the equipment and services outlined in the Contractor's Proposal. This amount is based on the Parties good faith belief that the Program will achieve at least 90% of the anticipated participation at the close of the Program Window. The Parties further agree that should this level of participation not

be achieved at the close of the Program Window, the compensation amount identified herein may be modified in accordance with the terms of Section 6. The County will render payment to Contractor as set forth in Section 5 of this Agreement.

5. **Method of Payment – Invoicing Terms** – All invoices will be submitted directly to the County for auditing and approval. The Contractor agrees to submit invoices as follows:

PAYMENT NO.:	DUE UPON:	PERCENTAGE:	AMOUNT:
1	Completion of the customer design review (CDR).	20%	\$1,551,655.23
2	A date no earlier than 60 days after the expiration of the Program Window.	40%	\$3,103,310.47
3	The completion of the installation of the portables for the local governments and the installation of the console at the dispatch center (as further described in the Proposal).	20%	\$1,551,655.23
4	The completion of the installation of the mobile radios in the various vehicles (as further described in the Proposal).	10%	\$775,827.62
5	System acceptance as determined by the County's consultant on the Project.	10%	\$775,827.62

The County shall remit payments to the Contractor within 60 days of approval and receipt of invoices by the County.

6. **Changes** - The County may, from time to time, require changes in the scope of the services to be performed by the Contractor. Such changes, which must be mutually agreed upon by written amendment signed by both the County and the Contractor setting forth changes to the scope of this Agreement and any change in costs to be borne by the County, including equipment and labor costs. The County shall have the right to approve any and all additional costs prior to any amendment being consummated.
7. **Services and Materials to be Furnished by County** - The County shall furnish the Contractor with all available necessary information, data, and materials pertinent to the execution of this agreement, including project specifications and drawings. The Contractor shall not be required to develop or attest to the reliability of such information within the scope of this Agreement.
8. **Termination of Agreement** - The County shall have the right to terminate this Agreement for breach by the Contractor of any milestone identified in the Scope of Services of the Proposal provided that the County first notifies the Contractor by written notice. The County shall give the Contractor a period of sixty (60) days to cure any such breach, subject to force majeure. The Parties further agree that the failure to limit any then ongoing efforts to cure to the sixty (60) day time period shall not be construed as a waiver of a breach. In the event of termination pursuant to this paragraph, the County shall pay the Contractor for all equipment which had at that point been purchased for the Project, services rendered and expenses incurred in connection with the Project through the effective date of termination.
9. **Information and Reports** - The Contractor shall, at such time and in such form as the County may require, furnish such periodic reports concerning the status of the Project and shall appear at Project meetings as required by the County. The Contractor shall furnish the County, upon request, with

copies of all documents and other materials prepared or developed in relation with or as part of the Project.

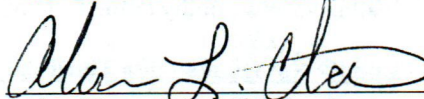
10. **Records and Inspections** - The Contractor shall maintain full and accurate records with respect to all matters covered under this Agreement. The County shall have access upon reasonable notice during normal business hours to inspect the books and records relating only to the Project, and the right to examine and audit the same and to make transcripts there from, and to inspect all program data, documents, proceedings and activities pertaining to this Project. Upon final payment as set forth in Section 5 of this Agreement, all records, including, but not limited to, program data, documents, and proceedings relating those products purchased by the County shown in Exhibit B shall be retained by the Contractor for a period of 10 years following the due date of Payment No. 5 per Section 5 above. The Contractor will retain and hold all Vida Core and System information owned by the Contractor for security reasons. The Contractor shall have the right to retain a copy of all such records.
11. **Accomplishment of Project** - The Contractor shall commence, carry on, and complete the Project as described in the Scope of Work as set forth in Section 2 above with all practicable dispatch, in a sound economical and efficient manner, in accordance with the provisions thereof and all applicable laws.
13. **Matters to be Disregarded** - The titles of the sections, subsections, and paragraphs set forth in this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement.
14. **Completeness of Agreement** - This Agreement and any exhibits incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.
15. **County Not Obligated to Third Parties** - The County shall not be obligated or liable hereunder to any third parties.
16. **When Rights and Remedies Not Waived** - In no event shall the making by the County of any payment to the Contractor constitute or be construed as a waiver by the County of any breach of covenant, or any default which may then exist, on the part of the Contractor, and the making of such payment by the County while any such breach or default may exist shall in no way impair or prejudice any right or remedy available to the County in respect to such breach or default.
17. **Personnel** - The Contractor represents that it has or will secure at its own expense, all personnel required in performing the services under this agreement. Such personnel shall not be employees of or have any contractual relationship with the County. All of the services required hereunder will be performed by the Contractor or by sub-contractors under its supervision, and all personnel engaged in the work shall be fully qualified to perform such services.
18. **Ownership of Data** - All materials in whatever form prepared or acquired by the Contractor for the work done under this Agreement, pertaining to the dispatch consoles and mobile or portable radios including statistical tabulations, publications, studies, reports, or other similar material shall become the property of the County, and shall be delivered to the County, upon request, by the Contractor upon completion of the Scope of Work as set forth in Section 2 above.
19. **Equal Opportunity Employment** - The Contractor specifically agrees: In hiring employees for the performance of work under this contract for any subcontract, no contractor or subcontractor shall, by reason of race, color, religion, sex, age, handicap, national origin, or ancestry, discriminate against any citizen of this state in the employment of a person qualified and available to perform the work to which this contract relates.

20. **Notices** - Any notice, bills, invoices or reports required by this agreement shall be sufficient if sent by the parties hereto in the United States mail, postage paid, to the addresses noted below:
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| <u>If to the County:</u>
Lorain County Administrator
226 Middle Avenue
Elyria, OH 44035
Attention: J.R. White, County Administrator | <u>If to the Contractor:</u>
Cleveland Communications, Inc.
5220 Hauserman Rd.
Cleveland, Ohio 44130
Attention: Alan L. Close, President |
|---|--|
21. **Insurance** - Contractor agrees to indemnify, defend, and save harmless the County, its respective employees, agents, contractors, and assigns from all claims and lawsuits of any kind arising from this Agreement for services, resulting from any negligent act, error, or omission on the part of the Contractor. Further, Contractor shall obtain and provide acceptable evidence of a general liability policy, in the amount of Two Million Dollars (\$2,000,000) per occurrence for injuries, claims, or losses including those that result in death or property damage arising from Contractor's services provided under this Agreement.
22. **Choice of Law** - The parties agree that the law of the State of Ohio shall control with regard to any and all contractual disputes that may arise and that any and all litigation undertaken or arising under this contract shall be presented in a Court of Competent Jurisdiction of Cuyahoga County, Ohio.
23. **Assignment** - The Contractor shall not assign this Agreement without the written consent of the County.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

Cleveland Communications, Inc.

By:

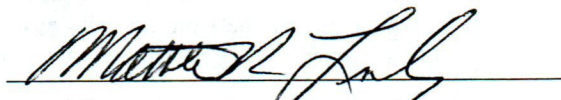


Alan Close, its President

The Lorain County Board of Commissioners


By:

Name:

Its:



Pres. Board

Approved as to form:


Name: _____
Date: 12-19-20